

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

June 15, 2012 through June 21, 2012

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

ADRIAN, MATTER OF v BOARD OF EDUCATION OF CITY SCHOOL DISTRICT OF NIAGARA FALLS, et al.:

4TH Dept. App. Div. order of 2/17/12; reversal; leave to appeal granted by Court of Appeals, 6/5/12;

CIVIL SERVICE - TERMINATION OF EMPLOYMENT - RESIDENCY REQUIREMENT - CHALLENGE TO ADMINISTRATIVE TERMINATION OF PETITIONER'S EMPLOYMENT FOR FAILURE TO SATISFY SCHOOL DISTRICT'S REQUIREMENT THAT EMPLOYEES HIRED OR PROMOTED AFTER A CERTAIN DATE RESIDE WITHIN THE CITY OF NIAGARA FALLS; PETITIONER'S ENTITLEMENT TO HEARING PURSUANT TO EDUCATION LAW §§ 3020 AND 3020-a;

Supreme Court, Niagara County, among other things, directed respondents to reinstate petitioner to her tenured employment with the City School District of the City of Niagara Falls; App. Div. dismissed petitioner's cross appeal, reversed the judgment, and dismissed the CPLR article 78 petition.

BEZIO, MATTER OF v DORSEY:

3RD Dept. App. Div. order of 1/12/12; affirmance; leave to appeal granted by Court of Appeals, 6/7/12;

PRISONS AND PRISONERS - MEDICAL AND SURGICAL TREATMENT - COURT-ORDERED FORCE FEEDING - WHETHER PRISON INMATE ON VOLUNTARY HUNGER STRIKE HAD RIGHT TO DECLINE FORCE FEEDING;

Supreme Court, Washington County granted petitioner's application, in a CPLR article 4 proceeding, to authorize the involuntary medical treatment and feeding of respondent; App. Div. affirmed.

CHENANGO FORKS CENTRAL SCHOOL DISTRICT, MATTER OF v NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD et al.:

3RD Dept. App. Div. order of 5/10/12; confirmation of determination, with dissents; sua sponte examination whether the two-justice dissent is on a question of law;

CIVIL SERVICE - PUBLIC EMPLOYEES FAIR EMPLOYMENT ACT (TAYLOR LAW) REFUSAL TO NEGOTIATE IN GOOD FAITH - WHETHER REIMBURSEMENT OF MEDICARE PART B PREMIUMS IS A TERM AND CONDITION OF EMPLOYMENT SUBJECT TO MANDATORY NEGOTIATION - ESTABLISHMENT OF PAST PRACTICE OF MAKING SUCH REIMBURSEMENTS;

App. Div. confirmed determination by respondent Public Employment Relations Board, which found that petitioner had committed an improper employer practice, and dismissed the CPLR article 78 petition.

JAMES v WORMUTH et al.:

4TH Dept. App. Div. order of 3/23/12; affirmance with dissents; PHYSICIANS AND SURGEONS - MALPRACTICE - WIRE FRAGMENT KNOWINGLY LEFT IN PATIENT'S BODY FOLLOWING SURGERY - WHETHER PLAINTIFF COULD RELY ON DOCTRINE OF RES IPSA LOQUITUR TO ESTABLISH PRIMA FACIE CASE OF MEDICAL MALPRACTICE OR WAS REQUIRED TO ESTABLISH THE APPLICABLE STANDARD OF CARE AND THE BREACH THEREOF THROUGH EXPERT MEDICAL TESTIMONY;

Supreme Court, Onondaga County dismissed the amended complaint pursuant to CPLR 4401; App. Div. affirmed.

THOMAS (CHESTER J.), PEOPLE v:

4TH Dept. App. Div. order of 6/10/11; affirmance; leave to appeal granted by Lippman, Ch.J., 6/6/12;

CRIMES - FAIR TRIAL - TRIAL COURT SUSTAINED PEOPLE'S OBJECTION TO REMARK MADE BY DEFENSE COUNSEL ON SUMMATION, URGING THE JURY TO INFER, FROM A POLICE OFFICER'S FAILURE TO TESTIFY, THAT THE OFFICER'S TESTIMONY WOULD NOT HAVE SUPPORTED THE COMPLAINANT'S TESTIMONY THAT SHE OMITTED FROM HER WRITTEN STATEMENT TO THE POLICE THAT HER LIVE-IN BOYFRIEND HAD SODOMIZED HER BECAUSE THE OFFICER TOLD HER THAT NO JUDGE WOULD BELIEVE HER; ALLEGED MOLINEUX VIOLATION;

Monroe County Court convicted defendant, upon a jury verdict, of criminal sexual act in the first degree, criminal contempt in the first degree and assault in the third degree; App. Div. affirmed.

CITY OF UTICA, MATTER OF v DAINES, et al.:

3RD Dept. App. Div. order of 5/10/12; reversal, with dissents; PROCEEDING AGAINST BODY OR OFFICER - CERTIFICATION OF AMBULANCE SERVICES - PUBLIC HEALTH LAW § 3000 - CHALLENGE TO APPELLATE DIVISION ORDER CONCLUDING THAT DETERMINATION BY NEW YORK STATE EMERGENCY MEDICAL SERVICES COUNCIL, WHICH DENIED MUNICIPALITY'S APPLICATION FOR CERTIFICATION OF ITS MUNICIPAL AMBULANCE SERVICE, HAD TO BE ANNULLED BECAUSE IT DID NOT APPLY THE "STRONG PRESUMPTION IN FAVOR OF APPROVING THE APPLICATION" REQUIRED BY PUBLIC HEALTH LAW § 3008(7)(b);

Supreme Court, Albany County dismissed petitioner City of Utica's application, in a CPLR article 78 proceeding, to review a determination of respondent New York State Emergency Medical Services Council denying petitioner's application for a certificate of need for its ambulance service; App. Div. reversed, annulled the determination of respondent New York State Emergency Medical Services Council and granted the City of Utica's CPLR article 78 petition to that extent.

WORDEN (ROBERT L.), PEOPLE v:

4TH Dept. App. Div. order of 1/31/12; affirmance; leave to appeal granted by Pigott, J., 6/5/12;

CRIMES - PLEA OF GUILTY - DENIAL OF MOTION SEEKING TO WITHDRAW GUILTY PLEA BASED UPON COMPLAINANT'S RECANTATION - DEFENDANT'S ENTITLEMENT TO A HEARING ON THE MOTION; WHETHER DEFENDANT KNOWINGLY AND VOLUNTARILY ENTERED INTO GUILTY PLEA; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL;

Monroe County Court convicted defendant, upon his guilty plea, of rape in the third degree; App. Div. affirmed.